



# Executive Memorandum

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## CONGRESS SHOULD GIVE RETIREES A GUARANTEE TO THEIR SOCIAL SECURITY BENEFITS

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One of the most troubling aspects of the debate over reforming the Social Security system is an attempt to scare senior citizens into believing that their benefits will be cut. No serious reform proposal before Congress would reduce Social Security benefits for retirees or for those nearing retirement. By hindering reform, such misleading claims merely increase the likelihood that future generations of retirees may not receive even the retirement benefits that past and present retirees expect. Regardless of any other Social Security reforms that Congress considers, it should take immediate steps to remove this fear of benefit reduction from the debate and guarantee seniors the benefits they deserve.

**What Seniors Expect.** After paying Social Security taxes over their working lifetimes and planning for retirement with the expectation that they will receive adequate Social Security benefits, many Americans rightly assume that the federal government has a moral obligation to pay them every cent they are due plus an appropriate cost-of-living allowance. They are simply unaware that their promised benefits are not legally guaranteed. Without a written guarantee, Congress could at any time reduce or eliminate those benefits. Although few Members are likely to call specifically for such a politically damaging course, it is nevertheless possible for them to do so under current law by changing the retirement age, taxing the benefits received, or changing how benefits are calculated. Indeed, such indirect reductions have happened already.

Congress should establish a legally binding property right to Social Security retirement benefits. An explicit property right would change the nature of the relationship between the federal government and Social Security recipients to that of a contract, which could not be broken or altered without the consent of both parties. Such a guarantee would give seniors peace of mind without making meaningful reform of the system more difficult or expensive.

**Making Social Security Benefits Secure.** Legislation now before Congress would establish such a property right. Senator Tim Hutchinson (R-AR) and Representative Walter Jones (R-NC), for example, have introduced the Social Security Benefits Guarantee Act (S. 806 and H.R. 832); and Senator Rick Santorum (R-PA) is expected to introduce similar legislation. These bills would require the Secretary of the Treasury to issue, to each recipient of Social Security retirement benefits, a certificate that includes a written and legally enforceable guarantee to a certain amount of monthly benefit and an annual cost-of-living

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increase. Issuing the certificates would constitute budget authority in advance of appropriations legislation—obligating the government to pay the benefits on the certificate, just as it is obligated to do with a Treasury bond. Retirees would receive their certificates when they first apply for retirement benefits.

Such a legal right to benefits is necessary because:

- **Seniors' benefits are not protected under current law.** The Supreme Court has ruled that Congress can end Social Security benefits at any time. In *Flemming v. Nestor* (1960), the high court decided that Americans have no property right to their Social Security benefits. Justice Hugo Black observed in his dissent that this decision “simply tell[s] the contributors to this insurance fund that despite their own and their employers' payments the Government, in paying the beneficiaries out of the fund, is merely giving them something for nothing, and can stop doing so when it pleases.” Establishing a property right for contributions to the fund would ensure that the benefits of those who depend on Social Security are protected by law.
- **Promising Social Security benefits is morally equivalent to issuing a Treasury bond.** When the U.S. government borrows money from individuals, financial institutions, or other countries, it gives them a bond in return that explicitly promises to repay every cent borrowed at a specific rate of interest. When it takes contributions from those who pay into the Social Security system and uses them to provide benefits to current retirees, it gives no such guarantee to those contributors who expect similar reimbursements when they retire. Without a guarantee, Congress can reduce their benefits at any time. There is no moral difference between the government's obligations to those who own its Treasury bonds and its obligations to those who contribute to the Social Security trust fund. Congress should enshrine this moral equivalence in law.

### Establishing a Property Right to Benefits.

Members of Congress, by establishing a property right to one's Social Security retirement benefits, would:

- **Guarantee seniors the benefits they deserve.** The Social Security Administration (SSA) estimates that, after about 2030, the federal government will take in only enough to pay about 75 percent of the benefits it is liable to pay out. Establishing an explicit property right to Social Security retirement benefits would make future Congresses unable to cut benefit levels for retirees or those nearing retirement to address this problem.
- **Create a contract that is easy to implement.** A contract simply requires an exchange of value by both parties. The certificate proposed in S. 806 and H.R. 832 would guarantee lifetime benefits in return for the Social Security retirement tax dollars that workers pay into the system. The SSA already knows how much each retiree is supposed to receive each month; it should have no difficulty in sending each retiree an engraved certificate guaranteeing those benefits.
- **Remove the fear of benefit reductions from the debate.** Without that fear, the debate can focus on real solutions, such as enabling workers to invest a portion of their existing payroll taxes in a secure portfolio to build their own nest eggs in personal retirement accounts. They would realize both higher retirement income and greater financial security as a result.
- **Have no effect on the cost of reform.** Every responsible reform plan before Congress will protect monthly Social Security benefits and cost-of-living increases. Giving retirees a property right to those benefits will not increase the cost of those reforms.

**Conclusion.** Creating an explicit property right to Social Security retirement benefits would protect those who are least able to afford benefit reductions and give them the peace of mind they deserve. Opponents of reform should refrain from rhetoric that scares senior citizens and instead make certain that the debate focuses on the important problems within the system itself.

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